

captioning quotas. MVPDs will be reluctant to drop existing channels that have developed subscriber loyalty, even if those channels do not have substantial amounts of captioned programming. Thus, MVPDs will look to new networks to fill their captioning quota requirements now and in the future.

25. Larger, more established networks will have the resources to caption significant amounts of their programming. Thus, the Commission's proposed rules will have the undesirable and unintended effect of assisting in the entrenchment of established networks, while diverse, niche networks are further hindered in their ability to gain carriage. The proposed rules therefore threaten overall diversity in programming.

26. Not only will the proposed captioning requirements impede The Golf Channel's ability to increase subscriber penetration, they will place the Network at serious risk of being displaced (or "bumped") from MVPDs on which it is presently carried. For if the Network is forced to reduce either the quality or quantity of its programming, or to caption less programming than other networks, it is highly likely that the Network would be bumped from systems and replaced by more established networks that are financially better able to substantially caption their programming and to do so without any reduction in the quality or quantity of that programming. The Golf Channel would not be able to recover from the adverse impact that decreased penetration would have on its ability to effectively market its programming and sell its advertising time. Such a fate would not only destroy the nearly \$135 million investment in the Network by over 80 persons and institutions, but would also jeopardize the jobs of The Golf Channel's 220 employees.

27. Given the enormous costs of producing and acquiring new and original

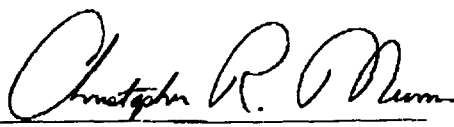
programming, most networks rely heavily on library programming in their formative years. The Golf Channel is no exception, as high-quality library programming targeted to the meet the specialized needs and interests of our subscribers constitutes approximately 27 percent of our programming. These are not merely tired re-runs of programs that television viewers have seen numerous times before. Instead, they represent the best of The Golf Channel's in-house productions and classic footage of some of the greatest golf tournaments of all time -- coverage that in some cases has not been available to viewers in decades. The Golf Channel would be extraordinarily burdened by a requirement that a significant amount of this library programming be closed captioned within the Commission's proposed transition period. Indeed, such a requirement may force The Golf Channel to forego this distinctive and diverse programming in favor of captioned programming that is already widely distributed -- at a direct cost to our overall quality and diversity of programming.

28. The Golf Channel appreciates the benefits of captioning and supports the worthy goal of improving access by persons with hearing disabilities to video programming. Indeed, a new programming network such as The Golf Channel has a strong market-based incentive to expand its distribution as much as possible and appeal to as many viewers as possible, including those with hearing disabilities. However, the Commission must recognize the economic plight of start-up networks for whom captioning is simply not commercially feasible at the present time. The Golf Channel looks forward to the day when it will be financially capable of making captioned programming available to our valued subscribers, of whom persons with hearing disabilities constitute a sizeable portion. Unfortunately, given current market conditions and captioning costs, this will not occur until the Network reaches the minimum level of distribution

for commercial viability -- 20 million subscribers. Until that time, the Commission should refrain from imposing this substantial burden on the Network.

29. For these reasons, The Golf Channel urges the Commission not to adopt the closed captioning rules as presently proposed. If the Commission chooses to enforce mandatory captioning requirements, it must, as proposed in the accompanying Comments, exempt by regulation all video programming distributed by low-penetrated networks until such time as they serve at least 20 million subscribers, the minimum level necessary to attain commercial viability. The Golf Channel, at this early stage in its development, simply cannot afford to absorb the tremendous cost of captioning substantial amounts of its programming. An exemption for new programming networks based on low subscriber penetration is the only way that the Commission can avoid the disparate and potentially disastrous effects that its proposed captioning rules will have on start-up, niche programming services such as The Golf Channel.

I, Christopher R. Murvin, certify, under penalty of perjury, that the foregoing information is true and correct to the best of my knowledge, information and belief.



Christopher R. Murvin

February 28, 1997

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Closed Captioning and Video Description
of Video Programming

Implementation of Section 305 of the
Telecommunications Act of 1996

Video Programming Accessibility

MM Docket No. 95-176

AFFIDAVIT OF JEFFERI K. LEE

1. I, Jefferi K. Lee, am President of BET Networks, Inc. and BET On Jazz: The Cable Jazz Channel ("BET On Jazz" or "the Network"). In this capacity, I am familiar with all aspects of the Network's business operations.

2. The purpose of this affidavit is to provide information to the Federal Communications Commission ("Commission") in response to the Notice of Proposed Rulemaking ("NPRM") issued in the captioned matter concerning closed captioning.

3. BET On Jazz launched on January 15, 1996, and is currently available to approximately 1.2 million subscribers in the United States. As a recently launched niche programming network with relatively low subscriber penetration, BET On Jazz will be significantly and adversely impacted by the closed captioning regulations proposed by the Commission.

4. In its NPRM, the Commission proposes to place legal responsibility for compliance

with captioning requirements on multichannel video programming distributors ("MVPDs") and broadcasters. In reality, however, as the Commission has recognized, the brunt of the Commission's proposed captioning requirements will be borne by programming networks. And yet, start-up networks such as BET On Jazz, who are struggling to obtain carriage on these MVPDs, can least afford the enormous cost of the Commission's proposed captioning requirements. Unlike large, established broadcast and cable programming networks, start-up networks such as BET On Jazz are struggling to increase subscriber penetration to generate revenues necessary to become and remain commercially viable. Given the limited revenues available to start-up networks, any funds required to caption programming would necessarily be diverted from funds presently dedicated to the creation and acquisition of diverse, quality programming. Thus, captioning requirements would result in a reduction in the overall quality and quantity of new networks' programming, and ultimately interfere with new networks' ability to increase subscriber penetration to the levels necessary to sustain their operations. Moreover, if the Commission's proposed rules were adopted, start-up networks such as BET On Jazz could not simply choose to forego immediate captioning of their programming, since MVPDs, in making their channel selections, will naturally favor those programming entities that have high percentages of captioned programming.

5. Below, I will address the following points:
 - a. the nature of the programming carried on BET On Jazz, and the decisions involved in targeting this niche;
 - b. the investment necessary to launch and thereafter operate BET On Jazz;
 - c. the fundamental importance of widespread

penetration to BET On Jazz's ability to become and remain commercially viable; and

- d. the profound impact on BET On Jazz that would be caused by application of the Commission's proposed closed captioning rules to low-penetrated, start-up networks such as BET On Jazz.

BET On Jazz And Its Programming

6. There are presently over 300 programming networks competing for carriage on the nation's MVPDs, approximately 135 of which are national basic cable networks like BET On Jazz. In order to attract and retain subscribers, niche programmers must target a segment of the population whose programming needs have not yet been adequately filled, and provide programming of the type, quantity and quality that their viewers desire.

7. BET On Jazz conducted extensive research concerning subscriber demand for programming focusing on jazz music and determined that the jazz music niche was currently underserved by existing networks. BET On Jazz is dedicated to producing high quality, unique programming that subscribers will want to watch. In the words of President Clinton, BET On Jazz "will help to broaden the scope and appeal of jazz, further enriching one of America's most important and original offerings to the arts."

8. BET On Jazz is a single-feed network that delivers programming on a 24-hour basis. Eighty percent of the Network's programming consists of musical performances, which are predominantly instrumental.

9. BET On Jazz is the nation's first television programming service dedicated exclusively to jazz music and includes in-studio performances, documentaries, concert coverage and celebrity interviews. Historically the jazz music genre is, and continues to be, a Black music

art form and many of the artists featured on BET On Jazz are minority musicians. Specific examples of the programming currently offered on BET On Jazz include: "Jazz Central," an original two-hour program featuring concerts and in-depth interviews with the top names in jazz; "Jazz Discovery," a daily program that showcases undiscovered jazz talent; "Blues," an hour-long look at legendary Blues artists such as B.B. King; and "Jazz Fest," displaying jazz festivals from around the world.

10. Approximately 50 percent of the programming currently provided by BET On Jazz is original programming, which is produced at its studio facilities in Washington, D.C., at considerable expense to the Network. BET On Jazz intends to increase the current level of original programming in the future.

Investment To Launch And Operate A Quality Programming Network

11. Launching a quality programming network requires a tremendous financial investment. By the time BET On Jazz is able to break even financially, it will have invested in excess of \$50 million in start-up costs for the network including capital expenditures for production and master control facilities, program production and acquisition, signal distribution and transmission, salaries, marketing, research and consulting. The original business plan for BET On Jazz projected that the Network would break even in five years. Naturally, if the Commission promulgates closed captioning mandates that require additional expenditures, BET On Jazz will not break even until a much later date, if at all.

12. Producing and acquiring original, high-quality programming like that featured on BET On Jazz is extremely expensive. For example, production costs alone for a one-hour original program on BET On Jazz typically exceed \$20,000.

13. Moreover, the costs of operating BET On Jazz are further increased because of the Network's commitment to high-quality production. For example, BET On Jazz has invested \$15 million to create a state-of-the-art television production and distribution facility in which its original programming is produced.

Distribution And Revenues Necessary For Commercial Viability

14. Basic cable networks depend on a combination of affiliation fees and advertising revenues to attain commercial viability. After a two-year promotional period during which BET On Jazz will be offered free of charge to cable systems that carry the Network, it is anticipated that approximately 40 percent of the revenues generated by BET On Jazz will come from affiliation fees. BET On Jazz's projections show that it must obtain distribution of 15 to 20 million subscribers on cable systems and other MVPDs before it will turn become commercially viable. This is a particularly daunting task for a niche programming network like BET On Jazz, whose target audience is far narrower than those of general entertainment networks. Consequently, any condition that further restricts the Network's ability to gain, or retain, carriage on MVPDs and generate revenue from affiliation fees jeopardizes the Network's chances of survival.

15. Distribution is pivotal in generating not only affiliation fees, but also advertising revenue, which is also directly tied to subscriber penetration. According to business plan projections, BET On Jazz must receive 60 percent of its revenue from advertising to remain commercially viable. However, until BET On Jazz achieves a penetration of at least 15, and in most cases 20 million subscribers, AC Nielsen will not rate the Network and therefore its national advertising revenues will generally be limited. Only then will the Network achieve distribution

capable of generating a sustained level of advertising revenues sufficient to make the Network commercially viable over the long term.

16. The Commission's proposed closed captioning rules will adversely impact BET On Jazz in any of several different ways. As explained below, the Network will be forced either to reduce the quantity or quality of its programming in order to free up funds to pay for the substantial costs of captioning, or simply decline to caption any significant amount of programming. Any of these scenarios will make it even more difficult for BET On Jazz to gain carriage on cable systems. BET On Jazz's distribution will falter, and the Network will be unable to grow the subscriber base necessary to sustain the Network.

Impact Of The Commission's Proposed Captioning Rules On BET on Jazz

17. Even though the Commission's proposed captioning rules place the legal responsibility for captioning on MVPDs, the Commission has recognized that programming networks such as BET On Jazz will be forced to bear the cost of captioning. Indeed, start-up, niche programming networks such as BET On Jazz, over which MVPDs have tremendous bargaining power (as opposed to highly-penetrated, well-established networks, such as ESPN),¹ will inevitably be forced to bear the brunt of the proposed captioning requirements.

18. The Commission estimates that the cost to caption prerecorded programming² such as that provided by BET On Jazz is between \$800 and \$2,500 per hour.³ Using a very

¹ Start-up, niche programming networks such as BET On Jazz inherently cater to smaller audiences than general programming networks such as CNN, ESPN, HBO or Disney, and have yet to achieve viewer loyalties on par with established networks that have had years to develop strong followings.

² Currently, all of BET On Jazz's programming is prerecorded.

³ See NPRM ¶ 20.

conservative figure of \$1,200 per hour, BET On Jazz estimates that the cost to caption its programming for 1997 alone would consume approximately 25 percent of the Network's annual programming budget.⁴ Indisputably, even if phased-in over the Commission's proposed eight-year transition period, the financial strain that mandated captioning will place on BET On Jazz will be staggering.

19. Moreover, for the vast majority of BET On Jazz's programming, captioning would be an extraordinarily inefficient use of the Network's scarce resources. Much of the Network's programming, predominantly consists of jazz music performances, which are heavily instrumental in nature. For example, music performances comprise over 75 percent of three of BET On Jazz's original productions, "Jazz Central," "Jazz Moods" and "Uncut." Overall, approximately 80 percent of BET On Jazz's programming consists of music performances that are largely instrumental. Even in cases where the music has lyrics, those lyrics generally are non-literal vocal intonations that could not be effectively captioned. Accordingly, the cost-effectiveness of mandated captioning for BET On Jazz's programming is questionable at best.

20. Start-up networks such as BET On Jazz are in the worst position to absorb the tremendous cost of the proposed captioning rules. BET On Jazz, operating at a loss for a number of years, will be forced to divert scarce funds from the creation and acquisition of new and original programming, resulting in an overall reduction in the quality and quantity of the Network's programming. For example, the Network may be forced to cut back on its plan to produce more original music programming at its new studio or to produce more new programs

⁴ If an hourly rate of \$2,500 is assumed, captioning costs alone would consume *over half* of BET On Jazz's annual programming budget.

focusing on jazz artists who played pivotal roles in the development of jazz. Greater duplication in the Network's line-up will result in decreased affiliate and subscriber satisfaction and will impede the Network's ability to increase penetration to the levels necessary to become and remain commercially viable. Moreover, a diversion of funds for captioning might also force the Network to forego enhancements to its production facilities -- enhancements that would benefit all viewers and ultimately help the Network turn the corner to profitability. Any of these consequences will diminish the viewing experience for all subscribers.

21. Nor will it be possible for BET On Jazz to pass along the enormous cost of captioning to MVPDs in the form of increased affiliation fees. BET On Jazz currently offers its programming to MVPDs at no charge. But even after this initial promotional period, BET On Jazz cannot increase affiliation fees above the level established in its business plan, for MVPDs' carriage decisions are price elastic, and price increases due to closed captioning costs would make BET On Jazz less attractive to MVPDs compared to larger, better-established profitable networks that would be able to absorb all or a significant part of the cost of closed captioning. Without doubt, price increases spurred by required closed captioning would further retard the Network's ability to maintain and increase its penetration. Nor can BET On Jazz simply raise its advertising rates. To do so would drive advertisers to other networks and/or other media.

22. Similarly, BET On Jazz cannot force its program suppliers to absorb captioning costs. The programming purchased by BET On Jazz is unique and available only from a limited number of sources. If BET On Jazz's suppliers are forced to caption, they will simply pass along these increased costs in the form of price increases, which BET On Jazz will have to absorb. As a result, funds needed to provide captioning would necessarily come out of the Network's

programming budget.

23. Yet, if start-up networks such as BET On Jazz do not caption a substantial portion of their programming, they will be severely disadvantaged in their ability to compete for scarce channel capacity. MVPDs, seeking to fill their few remaining channels, will naturally give preference to those networks that will help satisfy the MVPDs' legal responsibility for meeting captioning quotas. MVPDs will be reluctant to drop existing channels that have developed subscriber loyalty, even if those channels do not have substantial amounts of captioned programming. Thus, MVPDs will look to new networks to fill their captioning quota requirements now and in the future.

24. Larger, more established networks will have the resources to caption significant amounts of their programming. Thus, the Commission's proposed rules will have the undesirable and unintended effect of assisting in the entrenchment of established networks, while diverse, niche networks are further hindered in their ability to gain carriage. The proposed rules therefore threaten overall diversity in programming.

25. Not only will the proposed captioning requirements impede BET On Jazz's ability to increase subscriber penetration, they will place the Network at serious risk of being displaced (or "bumped") from MVPDs on which it is presently carried. For if the Network is forced to reduce either the quality or quantity of its programming, or to caption less programming than other networks, it is highly likely that the Network would be bumped from systems and replaced by more established networks that are financially better able to substantially caption their programming and to do so without any reduction in the quality or quantity of that programming. BET On Jazz would not be able to recover from the adverse impact that decreased penetration

would have on its ability to effectively market its programming and sell its advertising time. Such a fate would not only destroy the multi-million dollar investment made so far in the Network, but would also jeopardize the jobs of BET On Jazz's approximately 50 employees.

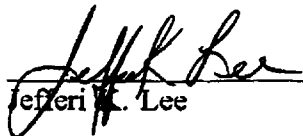
26. Given the enormous costs of producing and acquiring new and original programming, most networks rely heavily on library programming in their formative years. BET On Jazz is no exception, as high-quality library programming targeted to the meet the specialized needs and interests of our subscribers makes up over 50 percent of our programming. These are not merely tired re-runs of programs that television viewers have seen numerous times before. Instead, they have been carefully selected precisely because of their quality and entertainment value. Some of this material has never before been televised in the United States, and some footage from classic performances has not been telecast in decades. BET On Jazz would be extraordinarily burdened by a requirement that a significant amount of this library programming be closed captioned within the Commission's proposed transition period. Indeed, such a requirement would likely force BET On Jazz to forego this distinctive and diverse programming in favor of captioned programming that is already widely distributed -- at a direct cost to our overall quality and diversity of programming.

27. BET On Jazz appreciates the benefits of captioning and supports the worthy goal of improving access to video programming by persons with hearing disabilities. Indeed, a new programming network such as BET On Jazz has a strong market-based incentive to expand its distribution as much as possible and appeal to as many viewers as possible, including persons with hearing disabilities. However, the Commission must recognize the economic plight of start-up networks for whom captioning is simply not commercially reasonable. BET On Jazz looks forward to the day when the Network will be financially capable of making captioned

programming available to our valued subscribers. Unfortunately, given current market conditions and captioning costs, this will not occur until the Network reaches the minimum level of distribution for commercial viability -- 20 million subscribers. Until that time, the Commission should refrain from imposing this substantial burden on the Network.

28. For these reasons, BET On Jazz urges the Commission not to adopt the closed captioning rules as presently proposed. If the Commission chooses to enforce mandatory captioning requirements, it must, as proposed in the accompanying Comments, exempt by regulation all video programming distributed by low-penetrated networks until such time as they serve at least 20 million subscribers, the minimum level necessary to attain commercial viability. BET On Jazz, at this early stage in its development, simply cannot afford to absorb the tremendous cost of captioning substantial amounts of its programming. An exemption for new programming networks based on low subscriber penetration is the only way that the Commission can avoid the disparate and potentially disastrous effects that its proposed captioning rules will have on start-up, niche programming services such as BET On Jazz.

I, Jefferi K. Lee certify, under penalty of perjury, that the foregoing information is true and correct to the best of my knowledge, information and belief.


Jefferi K. Lee

February 28, 1997

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Closed Captioning and Video Description
of Video Programming

Implementation of Section 305 of the
Telecommunications Act of 1996

Video Programming Accessibility

MM Docket No. 95-176

AFFIDAVIT OF BRIAN HANSEN

1. I, Brian Hansen, am Vice President, Programming of America's Health Network ("America's Health" or "the Network"). In this capacity, I am familiar with all aspects of the Network's business operations.

2. The purpose of this affidavit is to provide information to the Federal Communications Commission ("Commission") in response to the Notice of Proposed Rulemaking ("NPRM") issued in the captioned matter concerning closed captioning.

3. America's Health has been in operation for less than one year, having launched on March 27, 1996. The Network is currently available to approximately 5.7 million subscribers in the United States. Of these, approximately 3.7 million (65 percent) are cable subscribers, and 2 million (35 percent) are DBS subscribers. As a recently launched niche programming network with relatively low subscriber penetration, America's Health will be significantly and adversely impacted by the closed captioning regulations proposed by the Commission.

4. In its NPRM, the Commission proposes to place legal responsibility for compliance with captioning requirements on multichannel video programming distributors ("MVPDs") and broadcasters. In reality, however, as the Commission has recognized, the brunt of the Commission's proposed captioning requirements will be borne by programming networks. And yet, start-up networks such as America's Health, who are struggling to obtain carriage on these MVPDs, can least afford the enormous cost of the Commission's proposed captioning requirements. Unlike large, established broadcast and cable programming networks, start-up networks such as America's Health are struggling to increase subscriber penetration to generate revenues necessary to become and remain commercially viable. Given the limited revenues available to start-up networks, any funds required to caption programming would necessarily be diverted from funds presently dedicated to the creation and presentation of diverse, quality programming. Thus, captioning requirements would result in a reduction in the overall quality and quantity of new networks' programming, and ultimately interfere with new networks' ability to increase subscriber penetration to the levels necessary to sustain their operations. Moreover, if the Commission's proposed rules were adopted, start-up networks such as America's Health could not simply choose to forego immediate captioning of their programming, since MVPDs, in making their channel selections, will naturally favor those programming entities that have high percentages of captioned programming. In fact, we believe that start-up networks may well be asked to carry an even higher percentage of closed captioned programming, given our relatively weak negotiating posture with MVPDs.

5. Below, I will address the following points:

- a. the nature of the programming carried on America's Health, and the decisions involved in targeting this

niche;

- b. the investment necessary to launch and thereafter operate America's Health;
- c. the fundamental importance of widespread penetration to America's Health's ability to become and remain commercially viable; and
- d. the profound impact on America's Health that would be caused by application of the Commission's proposed closed captioning rules to low-penetrated, start-up networks such as America's Health.

America's Health And Its Programming

6. There are presently over 300 programming networks competing for carriage on the nation's MVPDs, approximately 135 of which are national basic cable networks like America's Health. In order to attract and retain subscribers, niche programmers must target a segment of the population whose programming needs have not yet been adequately filled, and provide programming of the type, quantity and quality that their viewers desire.

7. America's Health is a niche programming network that was created to provide viewers with easy access to health-care information, in particular, rural America, which is chronically underserved by the medical community. The Network conducted studies and determined that health information was an underrepresented and highly desirable form of video programming subject matter. Positive subscriber response to the Network has continued to reinforce that determination.

8. America's Health is a single-feed network that delivers programming on a 24-hour basis. The Network will offer a total of 8,760 hours of programming in 1997, nearly double the amount delivered by any of the major broadcast networks.

9. The Network's programming is 100 percent original production, consisting of live, unscripted call-in "Ask the Doctor" shows in which doctors respond to viewers' most pressing health questions. The doctors and medical professionals featured include specialists in many different areas of medicine including pediatrics, obstetrics and gynecology, dietary science, veterinary medicine, family medicine, family therapy, sports medicine and general medicine. As discussed below, significant portions of the Network's medical advice programs involve video, graphics, illustrations, on-screen summaries of advice, and other nonverbal means of demonstrating medical procedures and conditions.

10. To establish a revenue stream in advance of meeting the minimum distribution threshold required by national advertisers, and to serve a compelling consumer need for reliable and readily available information about health products, America's Health has reserved most of its non-program content for product information and sales segments. These segments stand separate from, but adjacent to, the Network's main informational content, and occupy approximately 15 minutes of each hour. In most cases, they are unscripted. The products featured are not general merchandise, but rather, quality health-care products that are screened in advance by a board of highly respected health professionals, including medical professionals from the Mayo Clinic, one of the world's foremost research and treatment health-care centers. For example, the Network has featured such innovative health-care information products as Creative Multimedia's "Family Doctor, Fourth Edition" CD-ROM, inspired by Dr. Allan Bruckenheim's nationally syndicated news column. The presentations are conducted live during breaks in the Network's main program content and are enhanced by graphics and/or video overlays and other non-verbal forms of product information.

11. Seventy-five percent (16 hours per day) of the Network's programming is transmitted live, while the remaining 25 percent (8 hours per day) consists of selected rebroadcasts of those live transmissions during periods of low viewership.

Investment To Launch And Operate A Quality Programming Network

12. Launching a quality programming network requires a tremendous financial investment. It is expected that by the time America's Health achieves break-even, it will have invested in excess of \$100 million.

13. A principal element of this investment is the Network's programming, which is of a particularly high quality. The Network's most important assets are its approximately 15 on-air doctors and medical professionals, who are universally acclaimed for their knowledge and expertise, and for their ability to deliver health-care information and advice in an engaging, informative and professional manner. America's Health maintains a five-year, multi-million dollar consulting relationship with the Mayo Clinic to ensure that the information and medical advice it provides to viewers is thorough, accurate, and up-to-date.

14. The Network is committed to maximizing the quality of every aspect of its programming. For example, the Network aggressively recruits experts from across the nation to participate as guests on America's Health and share their health and medical expertise. And during its formative stages, the Network negotiated to secure exclusive access to the Mayo Clinic's electronic publisher (IVI Publishing) for medical illustrations and animations. This allows the Network's doctors to disseminate their information more effectively using over one thousand readily-accessible illustrations and medical images, which they can then annotate on-screen in a real-time mode. Other production commitments include on-screen quizzes,

videotaping of medical procedures, and live demonstrations of various medical techniques and practices. As a result, the Network's doctors can give viewers highly-visualized answers to their pressing medical questions. While maintaining this level of production quality on a daily, hour-by-hour basis places great demands on the Network's very limited resources, the Network's consumer testing has found this approach necessary to meet the needs and interests of the viewing audience.

America's Health's Revenues And The Importance of Penetration

15. America's Health receives no affiliation fees; it derives revenue from limited advertising and proceeds from its product sales operations. Both sources of revenue are linked directly to penetration. Therefore, it is essential that America's Health increase its penetration in order to become and remain commercially viable. But increasing penetration is a particularly daunting task for a niche programming network like America's Health, which has yet to fully prove its value in the marketplace or to establish a broad national constituency.

16. The Network's merchandising revenues, which make up a substantial portion of its total revenues, are directly linked to its distribution. But to be able to achieve any significant level of direct product sales, the Network must reach a large number of subscribers. Just like a retail store, the Network's sales volume is directly related to sustaining a sufficient level of customer "traffic," *i.e.*, viewers, to meet its product distribution goals. Subscriber penetration is also pivotal in generating advertising revenue. The Network has received some interest from advertisers who will pay only a very modest fee for advertising placement. But many national advertisers express a "wait and see" attitude towards America's Health, as they generally do with all new programming networks, until they obtain on the order of at least 15, and in most cases

20, million viewers. Thus, in its early stages, the Network must rely almost entirely on revenue from its product information and sales segments, which correlate more directly to distribution than any other factor. Consequently, any condition that further restricts the Network's ability to gain, or retain, carriage on MVPDs and generate revenue from product sales and advertising jeopardizes the Network's financial foundation.

17. The Commission's proposed closed captioning rules will adversely impact America's Health in any of several different ways. As explained below, the Network will be forced either to reduce the quality of its programming or reduce the amount of its live programming in order to free up funds to pay for the substantial costs of captioning, or simply decline to caption any significant amount of programming. Any of these scenarios will make it even more difficult for America's Health to gain carriage on cable systems. The Network's distribution will falter, and it will be unable to grow the subscriber base necessary to produce advertising or product sales revenues sufficient to sustain the Network.

Impact Of The Commission's Proposed Captioning Rules On America's Health

18. Even though the Commission's proposed captioning rules place the legal responsibility for captioning on MVPDs, the Commission has recognized that programming networks such as America's Health will be forced to bear the cost of captioning. Indeed, start-up, niche programming networks such as America's Health, over which MVPDs have tremendous bargaining power (as opposed to highly-penetrated, well-established networks, such as ESPN),¹

¹ Start-up, niche programming networks such as America's Health inherently cater to smaller audiences than general programming networks such as CNN, ESPN, HBO or Disney, and have yet to achieve viewer loyalties on par with established networks that have had years to develop strong followings.

will inevitably be forced to bear the brunt of the proposed captioning requirements.

19. The Commission estimates that the cost to "stenocaption" live, unscripted programming such as that provided by America's Health is between \$120 and \$1,200 per hour.² Using a mid-range figure of \$800 per hour,³ it would cost America's Health \$12,800 each day to caption its 16 hours of live, unscripted programming. On an annual basis, America's Health estimates that its cost to caption its programming could be nearly *\$4.7 million*.⁴ Even if phased-in over the Commission's proposed eight-year transition period, the cost of captioning the Network's programming will be approximately \$21 million,⁵ which exceeds the Network's entire programming budget for 1997. Indisputably, the financial strain that mandated captioning will place on America's Health will be staggering.

20. Start-up networks such as America's Health, however, are in the worst position to absorb the tremendous cost of the proposed captioning rules. America's Health, operating at a loss, already faces many difficult budgetary choices in its attempt to sustain and build high-quality programming for its audience. The addition of burdensome closed captioning requirements could force the Network to reduce the amount of live original programming that

² NPRM ¶ 20.

³ Unlike traditional programming that includes approximately 25 percent advertising, America's Health would be required to caption virtually every minute of its programming, including its product information segments. Thus, the rate of \$800 per hour is appropriate, and is, in all likelihood, a conservative estimate.

⁴ Computed in the following manner: 365 days/year x \$12,800/day = \$4,672,000.

⁵ Computed in the following manner: \$21.0 M = (\$4.7 M x 1/8)[for Year 1] + (\$4.7 M x 1/4)[for Year 2] + (\$4.7 M x 3/8)[for Year 3] + (\$4.7 M x 1/2)[for Year 4] + (\$4.7 M x 5/8)[for Year 5] + (\$4.7 M x 3/4)[for Year 6] + (\$4.7 M x 7/8)[for Year 7] + (\$4.7 M x 1)[for Year 8]. This analysis conservatively assumes that captioning requirements would be phased-in evenly over eight years.

it produces, and thereby increase the amount of repeated programming in its schedule. Extensive duplication in the Network's line-up will result in decreased affiliate and subscriber satisfaction and impede the Network's ability to increase penetration to the levels necessary to become and remain commercially viable. Moreover, the Network may be forced to compromise its commitment to production quality. This could take many tangible forms, such as a reduction in the number of doctors and/or appearances by guest experts to field viewers' questions, a reduction in the variety of health topics covered, or a reduction in our use of illustrations and medical images, or a reduction in the role of our outside consultants, the Mayo Clinic. Any of these would diminish the viewing experience for all subscribers. Finally, a diversion of funds for captioning might also force the Network to forego enhancements to its production facilities--enhancements that would benefit all viewers and ultimately help the Network turn the corner to profitability.

21. Captioning will be a particularly burdensome and expensive task for America's Health, as well as an inefficient use of scarce resources. Real-time "stenocaptioning" will be required to provide closed captioning for the Network's programming, of which 75 percent is live and unscripted. But as the Commission has recognized, the pool of qualified and trained real-time stenocaptioners is very limited, a problem that is likely to be exacerbated as more programmers are required to provide captioning. Moreover, the Network's programming has an inherently limited "shelf life" given its sensitivity to timely developments in the health and medical fields. Finally, the Network's video programming is already somewhat accessible to people with hearing disabilities given that a significant amount of the information provided in the Network's medical advice shows and product information segments is disseminated with non-

verbal forms of communications such as video, graphics, illustrations, and on-screen summaries of advice. The cost-effectiveness of mandated captioning for this programming is questionable at best.

22. Nor will it will be possible for America's Health to pass along the cost of captioning to MVPDs because our programming is distributed free of charge to MVPDs. The Network's "no affiliation fee" approach is an integral part of its business plans that cannot simply be altered absent a fundamental change in the Network's corporate strategy. Moreover, attempting to charge for carriage would substantially retard the Network's ability to maintain and increase penetration. Nor can advertising rates simply be raised. To do so would drive advertisers to other networks and/or other media. As a result, funds needed to provide captioning would necessarily come out of the Network's programming budget.

23. Yet, if start-up networks such as America's Health do not caption a substantial portion of their programming, they will be severely disadvantaged in their ability to compete for scarce channel capacity. MVPDs, seeking to fill their few remaining channels, will naturally give preference to those networks that will help satisfy the MVPDs' legal responsibility for meeting captioning quotas. MVPDs will be reluctant to drop existing channels that have developed subscriber loyalty, even if those channels do not have substantial amounts of captioned programming. Thus, MVPDs will look to new networks to fill their captioning quota requirements now and in the future.

24. Larger, more established networks will have the resources to caption significant amounts of their programming. Thus, the Commission's proposed rules will have the undesirable and unintended effect of assisting in the entrenchment of established networks, while diverse,

niche networks are further hindered in their ability to gain carriage. The proposed rules therefore threaten overall diversity in programming.

25. Not only will the proposed captioning requirements impede the Network's ability to increase subscriber penetration, they will place the Network at serious risk of being displaced (or "bumped") from MVPDs on which it is presently carried. For if America's Health is forced to reduce either the quality or quantity of its programming, or to caption less programming than other networks, it is highly likely that the Network would be bumped from systems and replaced by more established networks that are financially better able to substantially caption their programming and to do so without any reduction in the quality or quantity of that programming. America's Health would not be able to recover from the adverse impact that decreased penetration would have on its ability to effectively sell its advertising time and obtain revenues from its product sales operations. Such a fate would not only destroy the \$75 million invested so far in the Network, but would also jeopardize the jobs of its hundreds of employees and deprive consumers of a service they consider unique and valuable.

26. As a network whose basic goal is to provide viewers with easy access to health information, America's Health sincerely understands and appreciates the benefits of closed captioning and supports the worthy goal of improving access to video programming by persons with hearing disabilities. Indeed, America's Health has a powerful market-based incentive to expand its distribution as much as possible and appeal to as many viewers as possible, especially those with a keen interest in health matters. A fundamental part of the Network's service mission is to provide health-care communication to those who are otherwise underserved. However, the Commission must recognize the economic plight of start-up networks for whom captioning is